

Ly, Anh

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**From:** Sandra Parker [sandramparker@charter.net]  
**Sent:** Tuesday, May 02, 2006 4:06 PM  
**To:** Breene, John; Ly, Anh  
**Cc:** Corrielus, Jean M.  
**Subject:** Pat. appl. 09/628,599 (our docket CA990018US1)



ca990018us1  
Office\_Action.P

Dear Examiners,

I received an improper Office Action. I need your review and instructions asap, in order to file either a Response or a new Notice of Appeal, by 5/7/06.

This patent application was filed almost 6 years ago and has been under Appeal since 2004. We already filed an RCE previously, in 2003, after a false Examiner's promise, but to no avail. Almost two years after the Appeal Brief was filed, the Examiner issued an improper Office Action and used a law which was repealed almost 2 years ago (37 CFR 1.193). Moreover, he improperly performed a new search and this time he cited 2 IBM patents, but did not state that there are new ground for rejection. Even the mailing address is very old, at Washington DC. Moreover, he did not state that he obtained Supervisor's approval for the reopening.

I left phone messages for the Supervisory Examiner and Primary Examiner.

Please note that the new law is 37 CFR 41.39 and in MPEP it is Sec. 1207 (p. 1200-26), 1207.03 (p. 1200-35) and 1207.04 (p. 1200-39). Actually, the new CFR 41.39 does not allow the examiner to reopen prosecution so it is unclear which law was followed in MPEP 1207 and 1207.04. Further, p. 1200-35 states that a new ground of rejection is rare and may add a secondary reference from the prior art on the record. This was not followed here and two new references were picked in a new search.

I propose to write a Response stating all the errors and request a substitute Office Action or Examiner's Brief and that a new law and ground of rejection is indicated as such and only using previously found prior art.

Entering of the new prior art should not be allowed. Moreover, the Appellant should not have to pay additional appeal fees (\$400 difference) and for a new Reply Brief.

Please respond asap and propose an adequate solution.

Please advise,  
Sandra Parker



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,599	07/28/2000	Ian R. Finlay	12780-1015	3713

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02/07/2006

EXAMINER

LY, ANH

ART UNIT PAPER NUMBER

2162

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/628,599

Applicant(s)

FINLAY ET AL

Examiner

Anh Ly

Art Unit

2162

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is response to Applicant's Response filed on 09/10/2004.

***Response to Arguments***

2. In view of the Appeal Brief filed on 09/10/2004, PROSECUTION IS HEREBY REOPENED. A new ground rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

3. Claims 1- 22 are pending this Application.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-8, 10-17 and 19-22 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.: 5,875,334 issued to Chow et al. (hereinafter Chow).

6. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to claim 1, Chow teaches a method for pre-processing an access plan generated for a query in a relational database management system to include said access plan including a plurality of operation codes, each of said operation codes being associated with one or more executable functions for performing the query (figs. 1-3, Pre-processing a SQL query statement is processed through a query compiler for generating a access executable plan for a database system such as IBM's DB2; this process requiring a run-time interpreter for looking up local variable; also this executable plan includes a plurality of SQL3 Query control statements, which are parsing into some operation codes into query graph model (QGM) representation of the statements, from which they are then processed to optimized QGM, an access execution plan such as cost-based optimized access plan and they are to be produced operation code or opcode by code generation module (item 118): abstract, col. 1, lines 15-35, col. 6, lines 25-67 and col. 8, lines 8-58; also col. 10, lines 1-40);

determining from the access plan an executable function associated with a first operation code (fig. 1, parser, the optimized QGM, and threaded code generation are used to produce operation code of SQL query statements to get the optimized access plan or access execution plan : figs. 1 and 2, item 115 & 118, col. 6, lines 25-67 and col. 8, lines 8-58, col. 14, lines 40-67 and col. 15, lines 1-67 and col. 16, lines 1-67); and

augmenting said first operation code in the access plan with a pointer to said executable function to provide a direct call mechanism replacing lookup function of a runtime interpreter (figs. 1 & 2, the extracted SQL statement or control statements is used to produce opcode based on parser, QGM and code generation and replacing this

opcode (fig.2 and col. 15, lines 45-67 and col. 17, lines 25-67); the executable function in the run-time interpreter with a compiler generated local variables storing in symbol table for looking up with referencing local variables or pointers or indexes: fig. 4, col. 24, lines 36-67 and col. 25, lines 1-8; also, col. 15, lines 1-67, col. 17, lines 1-28, col. 20, lines 1-45 and col. 21, lines 5-55).

With respect to claim 2, Chow teaches comprising repeating steps (a) and (b) for remaining operation codes in the access plan (repeating the process with the SQL query statements with loop statement each time the function statement is called: col. 10, lines 12-18 and col. 12, lines 10-22).

With respect to claim 3, Chow teaches wherein said step (b) comprises augmenting said first operation code in the access plan with a pointer to an intermediate function, said intermediate function including a data structure for storing a pointer to said executable function (replacing these opcode by a lookup function to look referencing variables storing in the symbol table as the value of addressing or pointers: fig. 4, col. 24, lines 36-67 and col. 25, lines 1-8).

With respect to claim 4, Chow teaches wherein said data structure includes means for storing information associated with said executable function for said first operation code (fig. 4, symbol table, item 130 & 119, col. 24, lines 36-67).

With respect to claim 5, Chow teaches wherein said step (b) comprises augmenting said first operation code in the access plan with a second pointer to a data structure, said data structure providing means for storing information associated with said first operation code or said executable function (in the symbol table has more than

one local variables, each for each SQL query plan, thus there is a second pointer associated with the local variable or operation code: fig. 4, col. 24, lines 36-67).

With respect to claim 6, Chow teaches wherein said step (a) further includes assessing the executable function associated with the first operation code and if applicable, replacing the call to the executable function with a call to a second executable (call statement invoking the SQL statement and replacing the data statement: col. 14, lines 38-67 and col. 15, lines 1-67).

With respect to claim 7, Chow teaches wherein said intermediate function includes processing operations for the first operation code or the executable function associated with the first operation code (col. 23, lines 45-67 and col. 24, lines 1-42).

With respect to claim 8, Chow teaches wherein said processing operations in the intermediate function include gathering statistics on the user of the executable function associated with the operation code (fig. 1, item 301, analyzer generating information for the control flow and scopes and symbol table such as statistical information: col. 18, lines 12-40).

Claim 10 is essentially the same as claim 1 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 1 hereinabove.

Claim 11 is essentially the same as claim 2 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 2 hereinabove.



Claim 12 is essentially the same as claim 3 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 3 hereinabove.

Claim 13 is essentially the same as claim 4 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 4 hereinabove.

Claim 14 is essentially the same as claim 5 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 5 hereinabove.

Claim 15 is essentially the same as claim 6 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 6 hereinabove.

Claim 16 is essentially the same as claim 7 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 7 hereinabove.

Claim 17 is essentially the same as claim 8 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 8 hereinabove.

Claim 19 is essentially the same as claim 1 except that it is directed to a system rather than a method, and is rejected for the same reason as applied to the claim 1 hereinabove.

Claim 20 is essentially the same as claim 3 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 3 hereinabove.

Claim 21 is essentially the same as claim 4 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 4 hereinabove.

Claim 22 is essentially the same as claim 5 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 5 hereinabove.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.: 5,875,334 issued to Chow et al. (hereinafter Chow) in view of US Patent No.: 6,077,312 issued to Bates et al. (hereinafter Bates).

With respect to claim 9, Chow teaches a method as discussed in claim 1.

Chow teaches a SQL query statement is processed through a query compiler for generating a access executable plan for a database system such as IBM's DB2; this process requiring a run-time interpreter and for looking up local variable; also this executable plan includes a plurality of SQL3 Query control statement for parsing into some operation codes from query graph model (QGM) representation of the statement to produce an operation code based on access executable plan, replacing the executable function in the run-time interpreter with a compiler generated local variable for looking up the symbol table with referencing local variables or pointers. Chow does not clearly teach a pause for receiving user input before or after the call to the executable function.

However, Bates teaches halt execution of a computer program when the computer meets a predetermined criteria (abstract).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Chow the teachings of Bates. One having ordinary skill in the art would have found it motivated to utilize the halt execution of a program when it is needed as disclosed (Bates' abstract), into the


system of Chow for the purpose of including a pause for executing a program to replace opcode, thereby, helping to locate and identify errors in a program under development (Bates' col. 1, lines 10-20).


Claim 18 is essentially the same as claim 9 except that it is directed to a computer program product rather than a method, and is rejected for the same reason as applied to the claim 9 hereinabove.

**Contact Information**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh Ly whose telephone number is (571) 272-4039 or via E-Mail: ANH.LY@USPTO.GOV or fax to **(571) 273-4039 (Examiner's fax number)**. The examiner can normally be reached on TUESDAY – THURSDAY from 8:30 AM – 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene, can be reached on (571) 272-4107 or **Primary Examiner Jean Corrielus (571) 272-4032**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Any response to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, or faxed to: **Central Fax Center: (571) 273-8300**

  
JOHN BREENE  
SUPERVISOR / PATENT EXAMINER

ANH LY   
DEC. 9<sup>th</sup> 2005

<b>Notice of References Cited</b>	Application/Control No. 09/628,599	Applicant(s)/Patent Under Reexamination FINLAY ET AL	
	Examiner Anh Ly	Art Unit 2162	Page 1 of 1

#### U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,638,846	10-2003	Leung et al.	707/2
*	B	US-6,453,314	09-2002	Chan et al.	707/3
*	C	US-6,014,674	01-2000	McCargar, Scott E.	707/202
*	D	US-5,761,653	06-1998	Schiefer et al.	707/2
*	E	US-5,619,692	04-1997	Maikemus et al.	707/2
*	F	US-6,438,536	08-2002	Edwards et al.	707/2
*	G	US-5,548,758	08-1996	Pirahesh et al.	707/2
*	H	US-5,379,419	01-1995	Heffernan et al.	707/4
*	I	US-6,106,033	08-2000	Levine, Donald P.	707/101
*	J	US-5,274,820	12-1993	Gillet, Marc J. L.	717/139
*	K	US-5,875,334	02-1999	Chow et al.	717/141
*	L	US-6,077,312	06-2000	Bates et al.	717/129
*	M	US-6,339,841	01-2002	Merrick et al.	717/166

#### FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

#### NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.